

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	
v.)	
)	ICC Docket No. 11-0434
Commonwealth Edison)	
)	
Investigation of Rate GAP pursuant to)	
Section 9-250 of the Public Utilities Act.)	

IGS ENERGY’S APPLICATION FOR REHEARING

Interstate Gas Supply, Inc. (“IGS Energy”), by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.880 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Admin. Code 200.880), respectfully requests rehearing of the Commission’s April 4, 2012 Order (“Final Order”) in the instant proceeding.

IGS Energy is a licensed Alternative Retail Electric Supplier (*see* ICC Docket No. 11-0178) and an active participant in the Illinois retail electric market. This proceeding is an investigation pursuant to Section 9-250 of the Public Utilities Act (“Act”), 220 ILCS 5/9-250, of the Commonwealth Edison Company (“ComEd”) Rate GAP tariff, which relates to municipal aggregation of electricity (“Municipal Aggregation”) by a governmental authority (“Governmental Authority”). Municipal Aggregation is a relatively new component to the dynamic, continuously evolving Illinois competitive electricity market. As noted in IGS Energy’s February 3, 2012 Verified Statement of Position and its March 12, 2012 Brief on Exceptions, protecting the integrity of the competitive market and confidential customer information is both a benefit to Illinois consumers as well as vital to the success of Municipal Aggregation. (*See* IGS Energy Statement of Position at 1-2; IGS Energy Brief on Exceptions at 1.)

On this point of protecting confidential information, the Commission's Final Order adopts a definition of "Retail Customer" that could lead to – and perhaps already has led to – problems and confusion in the marketplace, particularly for customers who have individually chosen to switch from bundled service provided by ComEd to obtain their electric supply from a Retail Electric Supplier ("RES"). It is imperative that customers who have affirmatively chosen to switch to a RES not have that decision revoked or interfered with in any way by ComEd, any Governmental Authority, or any other person or entity involved with the Municipal Aggregation process. That is, if a customer has chosen to switch to an RES, it is fundamental to the functioning market that the customer's decision be respected by all parties, including all parties associated with Municipal Aggregation, and nothing about the Municipal Aggregation process should change that switched customer's status as a customer who takes supply from its chosen RES. Similarly, if a customer is considering switching to an RES individually rather than through an upcoming aggregation – even after a Municipal Aggregation program has been approved by a municipality's voters in a referendum – it is vitally important that the customer's decision must be respected by all parties.

Neither the Act, the Illinois Power Agency Act, nor any other law indicates a preference between individual customer switching and customer switching by means of a Municipal Aggregation – customers are free to pursue either course (or neither), as the customers choose. Similarly, nothing in the law precludes a RES from lawfully marketing its products or services in municipalities or other jurisdictions that are considering or have implemented a Municipal Aggregation program. Thus, if a customer has chosen to contract individually with a RES – or is considering doing so – it would be wholly inappropriate for that contract, or the contracting process, to be interfered with in any way as a result of Municipal Aggregation.

Further, it would be wholly inappropriate for customers to receive inaccurate information relating to the effect of Municipal Aggregation on customers' rights. Customers ought not have to take any action to remain customers of their chosen RES, and certainly ought not be required to participate in any "opt-out" process to maintain their chosen status as RES customers. Similarly, if customers are considering switching before becoming part of an aggregated load through a Municipal Aggregation program, no involved party should be permitted to inappropriately talk customers out of switching, and certainly no party should be attempting to dissuade such customers from switching individually by providing false or misleading information.

At a minimum, switched customers must not be included in the list of customers whom a Governmental Authority considers to be eligible for Municipal Aggregation. Those switched customers already have made an active, affirmative choice about their preferred supplier of electricity, and have entered into contracts to document that choice. Any interference in that contractual relationship by any party involved in a Municipal Aggregation is inappropriate and may constitute a violation of Illinois law. In any event, however, it is quite clear that potential customer confusion may result from any attempt to include such a customer in a Municipal Aggregation; as a result, the Commission should take the steps necessary to prevent that from occurring.

Furthermore, no Governmental Authority or other party involved in a Municipal Aggregation program should be permitted to try to dissuade customers who are considering switching suppliers individually rather than as part of a Municipal Aggregation from doing so. Municipal Aggregation programs should not preclude customers from switching suppliers

individually. On the contrary, the option to individually switch remains a right of each customer and any attempt to curb that right is inconsistent with the Act.

For the reasons stated, it is inappropriate and unnecessary for information about switched customers to be included in the information provided by ComEd to a Governmental Authority that is considering or implementing a Municipal Aggregation. However, the transmission of such information from ComEd to the Governmental Authority appears to be the effect of the Final Order's decision regarding the term "Retail Customer." (*See* Final Order at 13.)

Without clear rules regarding the treatment of switched customers and those customers considering a switch individually rather than through a Municipal Aggregation, the provision of such information from ComEd to a Governmental Authority serves no valid purposes, but puts such customers at risk for confusion and potential contractual interference from parties involved in the Municipal Aggregations. Accordingly, IGS Energy respectfully requests that the Commission grant rehearing to (1) modify the Final Order's the definition of "Retail Customer" to exclude customers who have already switched to a RES and (2) clarify the status of switched customers and those customers who may choose to switch to a RES individually even while a Municipal Aggregation program is being formulated by such customers' municipality or other applicable Governmental Authority. (*See, e.g.*, Proposed Replacement Language included in IGS Energy's Brief on Exceptions at 3-4.)

For the reasons stated herein, IGS Energy respectfully requests that the Commission grant rehearing in this proceeding and grant such additional relief as the Commission deems appropriate.

Respectfully submitted,

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